



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

DEC 17 2008

VIA FEDERAL EXPRESS OVERNIGHT MAIL AND VIA
CERTIFIED MAIL NUMBER 7003 0500 0003 0874 7691
RETURN RECEIPT REQUESTED
URGENT LEGAL MATTER; PROMPT REPLY REQUESTED

Brigadier General Kenny C. Montoya
President
New Mexico State Armory Board
10 Bataan Blvd.
Santa Fe, NM 87508-4695

Re: Griggs and Walnut Ground Water Plume, City of Las Cruces, Doña Ana County, New Mexico; Site ID No.: HZ; CERCLIS #NM0002271286; Second Request for Information Pursuant to CERCLA Section 104(e), 42 U.S.C. Section 9604(e)

Dear General Montoya:

This is our second request to the New Mexico State Armory Board (hereinafter the New Mexico State Armory Board is referred to as the "Board," "you" or "your") to provide, **within 30 days**, certain information regarding the nature or extent of a release of the dangerous hazardous substance tetrachloroethene (PCE) at the Griggs and Walnut Ground Water Plume Site (the "Site") that is located in the City of Las Cruces. This second request is more specific than our February 2004 request.

This information request is not a determination that the Board is responsible or potentially responsible for contamination that occurred at the Site. The EPA is sending this letter as part of its investigation and does not expect you to pay for or perform any site-related activities at this time. Should EPA determine that you are responsible or potentially responsible for response activity, you will receive a separate letter clearly stating such a determination as well as the basis EPA has for making such a determination.

The EPA believes that the Board may have information which may assist us in our investigation. We encourage you to give this matter your full attention, and **we ask that you respond to this request for information within thirty (30) calendar days of your receipt of this letter.** *Failure to respond to such an information request may result in EPA seeking penalties of up to \$32,500 per day of violation.* In addition, furnishing false, fictitious, or fraudulent statements or representations to EPA is subject to criminal penalty under 18 U.S.C. § 1001.



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Site Background

The Site occupies an area that is at least 9,750 feet by 2,250 feet located at and around the intersection of Griggs Avenue and Walnut Street in Las Cruces. Ground water in the Site area is polluted with PCE. The PCE in the ground water may pose an imminent and substantial endangerment to residents of Las Cruces because it may ultimately reach municipal water wells at concentrations that pose a risk to the health of those who obtain water from those wells. The Site is currently in the Remedial Investigation/Feasibility Study (RI/FS) phase of the cleanup process under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"). The information you provide to us regarding the release of the hazardous substance PCE may be vitally important to us as we investigate the source(s) of the contaminants affecting ground water. We believe that you may be able to provide us with information regarding releases of PCE because there are high concentrations of PCE in or near the area once occupied by an armory you operated on the Site, and because the types of operations that occur at an armory may have involved the use of PCE as a cleaning solvent or degreaser.

Description of Legal Authority

The Federal "Superfund" law (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, also commonly referred to as CERCLA) gives EPA the authority to, among other things: (1) assess contaminated sites; (2) determine the threats to human health and the environment posed by each site; and (3) clean up those sites. CERCLA also provides EPA with several methods of obtaining various types of information from a wide range of entities. Section 104(e), entitled "Information Gathering and Access," grants EPA the authority to issue "Information Requests."

Information Request

While EPA seeks your cooperation in this investigation, compliance with the Information Request is required by law. Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), EPA has broad information-gathering authority. Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States or its private contractors, pursuant to 40 CFR 2.310(h), even if you assert that all or part of the information is confidential business information. Although you may consider some of the information EPA is requesting to be confidential, please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact. Follow the procedures outlined in the Enclosure (Information Request, Griggs and Walnut Ground Water Plume Superfund Site), specifically described in number six of the Instructions, "Confidential Business Information," to ensure your information is treated confidentially.

If you have information about other parties who may have information which may assist EPA in its investigation or may be responsible for the contamination found, that information should be submitted along with this Information Request. Please direct your response to this letter and questions regarding the matters in this letter to:

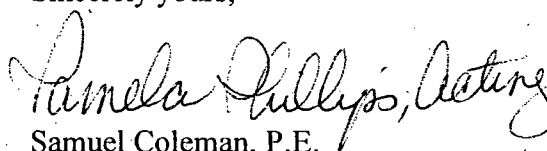
Cynthia Brown, Enforcement Officer
Superfund Enforcement Assessment Team (6SF-TE)
United States Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Telephone: (214) 665-7480
Email: brown.cynthia@epa.gov

Legal questions concerning matters discussed herein should be addressed to:

Mr. James E. Costello, Senior Attorney
U.S. Environmental Protection Agency, Region 6
Office of Regional Counsel (6RC-S)
1445 Ross Avenue
Dallas, TX 75202-2733
Telephone: (214) 665-8045
Email: costello.james@epa.gov

We appreciate your cooperation in providing this information to EPA. Thank you for your time and attention to this matter.

Sincerely yours,



Samuel Coleman, P.E.
Director
Superfund Division

Cc: John D. Earl, Executive Director, State Armory Board
Todd Endres, NMAG-FMO-EV New Mexico Army National Guard

Enclosures: Enclosure 1 – Instructions, Definitions and Questions
Enclosure 2 - Site map

ENCLOSURE 1
Griggs and Walnut Ground Water Plume Superfund Site
December 2008
Instructions, Definitions and Questions

INSTRUCTIONS

Under the authority of Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), EPA is requesting you to respond to this Information Request. Compliance with this Information Request is required by law. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties.

This Information Request is not subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501, et seq.

1. Answer Every Question Completely. A separate response must be made to each of the questions set forth in the Information Request. For each question contained in this letter, if information responsive to this information request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. Precede each answer with the corresponding number of the question and the subpart to which it responds. In addition, please write out the entire question to which the answer corresponds.
3. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.
4. Identify Sources of Answer. For each question, identify (see Definitions) all the persons and documents that you relied on in producing your answer.
5. Continuing Obligation to Provide/Correct Information. Pursuant to CERCLA Section 104(e)(2), if additional information or documents responsive to this Request become known or available to you after you respond to this Request, you must supplement your response to EPA.
6. Confidential Business Information. The information requested herein must be provided even though you may contend that it includes confidential business information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and F, and Section 3007(b) of RCRA, 42 U.S.C. § 6927(b), and 40 C.F.R. § 2.203(b). To prove your claim of confidentiality, each document must separately address the following points:

- a. the portions of the information alleged to be entitled to confidential treatment;
- b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. measures taken by you to guard against the undesired disclosure of the information to others;
- d. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- e. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
- f. whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit both a clean and a redacted version of any documents or response for which you claim confidential in a separate envelope. If you are submitting information which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within fourteen (14) days of receiving this Information Request.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e). **If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.**

7. Disclosure to EPA Contractor. Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. 2.310(h), even if you assert that all or part of it is confidential business information.

8. Objections to Questions. Even if you have objections to some or all the questions within the Information Request, you are still required to respond to each of the questions.

DEFINITIONS

The following definitions shall apply to the following words as they appear in Information Request. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or the Resource Conservation and Recovery Act ("RCRA"), in which case the statutory or regulatory definitions shall apply.

1. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
2. The term "any," as in "any documents" for example, shall mean "any and all."
3. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, telecopy, telefax, report, notice, message, analysis, comparison, graph, chart, map, interoffice or intra-office communications, Photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any computer disk, any information stored on a computer hard drive or memory tape or other type of memory generally associated with computers and data processing; and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document and (e) every document referred to in any other document.
4. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business and personal addresses and telephone numbers, and present or last known job title, position or business.
5. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including, but not limited to, a sole proprietorship), to set forth its full name, address, and legal form (e.g., corporation (including state of incorporation), partnership, etc.), organization, if any, a brief description of its business, and to indicate whether or not it is still in existence and, if it is no longer in existence, to explain how its existence was terminated and to indicate the date on which it ceased to exist.

6. The term "identify" means, with respect to a document, to provide the type of document, to provide its customary business description, its date, its number, if any (e.g., invoice or purchase order number), subject matter, the identity of the author, addressor, addressee and/or recipient, and the present location of such document.
7. The terms "includes," or "including" shall not be construed as words of limitation; that is, they shall be construed such that the phrases "without limitation" or "but not limited to" are implied, unless such phrases are already in place. For example, "including x, y, and z" would be construed as "including without limitation x, y, and z" or as "including, but not limited to, x, y and z," but the phrase "including without limitation x, y and z" would be construed as it reads.
8. The term "you," "your" or the "Board" shall mean the New Mexico State Armory Board, the New Mexico National Guard, and their officers, members, elected officials, managers, employees, contractors, and agents.
9. The term "person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body. *See* Subsection 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).
10. Words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, or 40 CFR Part 300, in which case the statutory or regulatory definitions shall apply.

QUESTIONS

1. Identify (*see* Definitions) the person(s) answering these questions on behalf of the Board.
2. Identify any documents you (*see* Definitions) use now or have used in the past on the Site that mention dry cleaning, PERC, perc, perchloroethylene, tetrachloroethylene, TCE, PCE, degreasing or cleaning weapons, or degreasing or cleaning automotive or truck parts.
3. Identify (*see* Definitions) any documents that describe the cleaning, lubrication or maintenance of the Twin 40-MM Full Tracked Self-Propelled Gun M42 and M42A1.
4. Identify (*see* Definitions) any documents that describe shipment, purchase, or requisition of solvents, thinner, or degreaser, or that describe the shipment, purchase, or requisition of any material containing PERC, perc, perchloroethylene, tetrachloroethylene, TCE, or PCE.

5. Identify (*see* Definitions) any person associated with you (*see* definitions) who may know of any documents responsive to Question 3, 4, or 5 above

6. Identify (*see* Definitions) any person you think may be able to provide a more detailed or complete response to any question contained herein, along with the additional information or documents (*see* Definitions) that you think the person may have.

REQUESTS FOR DOCUMENTS

Please provide a copy of each document identified in response to the above questions. In addition, please label each copy with the question number or numbers and write out the entire question to which a document responds.